

Planning Board Minutes 11/10/09

NEWMARKET PLANNING BOARD
TOWN COUNCIL CHAMBERS
NOVEMBER 10, 2009
7:00 P.M.

Present: John Badger (Chairman), Eric Botterman (Town Council representative), Diane Hardy (Town Planner), Rick McMenimen (Alternate), Janice Rosa, Peter Roy (Vice-Chairman), Val Shelton, Eric Weston

Absent: Adam Schroadter (Alternate), George Willant (excused), Justin Normand (Alternate)

Chairman Badger called the meeting to order at 7:02 p.m.

Pledge of Allegiance

Chairman Badger appointed Rick McMenimen to sit in for George Willant.

Public Comments

No comments.

Review and Approval of Minutes: 10/13/09, 10/27/09

October 13, 2009

Vice Chairman Roy noted on page 4, line 6 the word "could" should be changed to "to."

Action

Motion: Vice-Chairman Roy made a motion to accept the minutes from the October 13, 2009 meeting as amended.

Seconded: Janice Rosa

Vote: All in favor

October 27, 2009

Action

Motion: Vice-Chairman Roy made a motion to accept the minutes from the October 27, 2009 meeting as presented.

Seconded: Rick McMenimen

Vote: All in favor

Regular Business

Applicants: Wayne & Janice Rosa

Location: 421 Wadleigh Falls Road, Tax Map R6, Lot 2, B3 Zone

Application: Public hearing for an application for renewal of an excavation

Permit

Janice Rosa stepped down for this application.

Wayne Rosa explained he was before the Board for a three year renewal of his gravel pit permit. He showed an updated plan. The lot is located off Route 152. He showed the access road. The plot plan shows excavation areas and reclaimed portions of the lot. He also showed the areas that still need to be excavated and reclaimed. Zoning Administrator Dan Vincent did an inspection of the pit on October 15, 2009; Town Planner Diane Hardy had attended the inspection. There are three (3) areas Dan Vincent had made recommendations for including: (1) stabilizing the main construction entrance; (2) addressing a puddle on the lot; and (3) working together with Mr. Rosa on locating required safety fences. Test pits have been dug and a letter report has been provided to the Planning Board which shows the excavation is well above the seasonal ground water table. Also, the Conservation Commission has provided a letter saying members had inspected the lot on October 31, 2009 and felt everything seemed to be in order.

Town Planner Diane Hardy confirmed the Board received a letter from Conservation Commission Chairman Bruce Fecteau dated November 7, 2009 which reads as follows:

"On Saturday, October 31, 2009, Val Shelton and I met with Wayne & Janice Rosa at their gravel pit on Wadleigh Falls Road. We noted no visible standing water on the site. The woodland buffer and the set backs seemed to be in order. The advancement of reclaimed area has been graded, seeded and grass is growing. Storage of rock and loam were in locations as marked on the plan. We did note a stump pile which the owners stated came from the site which they process intermittently. No fuels or other hazardous materials were observed. There is a drainage ditch which leads to an isolated area reclaimed on the east side of the property. This has created a man made wetland by vegetation type; there is significant growth of phragmites and other wetland type vegetation in this man made wetland area. Consideration should be given to eradicating the phragmites and other vegetation if they are deemed to be the invasive type. We understand once this property is fully excavated all drainage will be through the Newmarket Sand and Gravel site."

Town Planner Diane Hardy referenced the excavation inspection she and Zoning Administrator Dan Vincent had done on October 15, 2009. She has prepared a checklist that mirrors the Town's excavation regulations which were passed by the Planning Board in 2000. These regulations apply to renewals as well as new gravel pit applications. This checklist was used in the field when she and Zoning Administrator Dan Vincent conducted the inspection to determine whether the site was in compliance with the town's requirements. Zoning Administrator Dan Vincent also reviewed the original excavation plan dated December 29, 2003. Each sheet of the plan was reviewed as were the detailed construction notes. In addition to the detailed report, there are also a number of photographs that help provide information about the site for Board members. There were three issues as Mr. Rosa had pointed out: the fencing, low areas and main access. She and Zoning Administrator Dan Vincent spoke to Mr. Rosa about the low area and suggested test pits be done. Mr. Rosa hired an engineering consultant to work with him to do the test pits. She referenced a letter from Mike Sievert from MJS Engineering addressed to the Newmarket Planning Board which reads as follows:

"Pursuant to your request I have witnessed a test pit at Wayne Rosa's gravel pit and determined the ponding of water at the mid-level elevation at the northerly side of the pit is not due to the groundwater table. The test pit results did not indicate the bottom of the pit to be within five feet of the groundwater level adjacent to the ponded water. The cause of the ponding appears to be from silt on the surface which appears to be from a previous screening operation."

Town Planner Diane Hardy explained Mr. Sievert did not feel what was observed in the field was ground water coming to the surface in that location. Mr. Rosa has also indicated upon final grading and reclamation of the site that area would be graded so it will drain properly in order to eliminate that pocket of water. Mr. Rosa clarified he would eliminate that pocket of water before final reclamation of the site.

Chairman Badger asked if Wayne Rosa would work with Zoning Administrator Dan Vincent on the fencing. Wayne Rosa answered he would and requested the Board to instruct Zoning Administrator Dan Vincent to participate in the locations of the fencing.

Wayne Rosa noted Zoning Administrator Dan Vincent had expressed some concern with the construction entrance. He did not agree with Mr. Vincent's assessment. The existing construction entrance has been in existence for 26 years. There is no debris being brought onto Route 152 as a result of trucks entering or leaving the site. He did not feel a new construction entrance was needed. He felt a new construction entrance would result in new material being brought onto Route 152 as a result of the disturbance. He explained a stabilized construction entrance is typically set up for new sites. Material is often tracked onto surfaces for 20 to 30 feet. There is 400 to 500 feet of gravel driveway currently.

Val Shelton asked about the stumps that she assumed was debris from trees that had been removed from the site at one point. She asked what the intention of those trees would be in the future. Wayne Rosa explained that pile has been there over 26 years. There are a few options for the pile; he can remove the debris from the site, he can leave them to rot as woodland creatures would use that area for habitat, or he can grind them. He noted he would not bury them onsite.

Chairman Badger noted the Planning Board has worked very hard at staying on track during their meetings. He noted there would be a five minute limitation per public comment.

Chairman Badger opened the public hearing at 7:19 p.m.

Rose-Anne Kwaks of Wadleigh Falls Road noted her appreciation for being allowed to speak as the last time this was before the Board she had not been allowed to speak. At that time it had been made clear there would be no public comments from anyone who had spoken at the prior meeting. She felt this was a violation of the public's rights to provide input. She also felt it was a violation of the public's rights to limit the comment period especially when the Board knows she had a lot of information to share. She noted she did not want to close the Rosa Pit down, but had concerns she felt the Planning Board should be aware of. She was concerned there are off-site materials being brought on site. These materials could possibly contaminate the aquifer. She referenced the plan from 2003 noting the approval had only been for excavation and reclamation. No approval had been given for bringing new materials to the site. She noted she had provided Town Planner Diane Hardy some literature relative to running a commercial business from that location which would include bringing materials on site. She noted she had additional information if the Board wanted it. She also had a copy of a court case given to her from the State relative to a superior court decision on an excavation site. The case law provided by the town's attorney was relative to the permitting of junkyards while the court case she received from the

State was relative to the permitting of gravel pits. According to NH Department of Environmental Services (DES) regulations a new plan must be submitted every six years if there have been any changes. She believed the last submitted plan was in 2003.

Town Planner Diane Hardy noted she had spoken with the State NHDES. The State received a copy of the 2003 plan. Rose-Anne Kwaks interrupted hoping to get her full five minutes of comments in.

Rose-Anne Kwaks noted she received this information from Mary Pinkham-Langdon (of the Department of Revenue Administration) during a four hour interview. A set of plans is supposed to be submitted every six years if there have been changes. She referenced minutes stating stumps have been buried on site. She noted RSA 155 E: 3 states what is needed for an application. It shall contain the breadth, depth and slope of the proposed excavation and the estimated duration of the project. She noted she has not seen this information on any of the pages set forth. It also requires the highest elevation of the average ground water table within or next to the proposed excavation site. It was explained test pits have been dug and a letter report has been provided to the Board which shows the excavation is above the seasonal ground water table. She felt the pit should also be in compliance with the Section 5.01 of the Aquifer Protection Overlay District. She noted there are drainage pipes on-site and expressed a concern with them. The application before the Board is for excavation and reclamation; not for a commercial use involving bringing outside material into the lot to sell. She agreed she has never seen any vehicle bringing material onto the roads from the pit. She does not want to see the pit closed down. She is a former member of the Conservation Commission. She has great concern with all the pits in town. There is a lot of responsibility to overseeing these pits. If the Planning Board could be more proactive including members visiting the sites annually there would be no dilemma over what violations, if any, are being made. Her main concern is the material being brought into the site. Also, she did not feel the application was complete in regards to meeting all the requirements of RSA 155:E.

Chairman Badger closed the public comments at 7:27 p.m.

Town Planner Diane Hardy noted she had the opportunity today to speak with Amy Clark an environmental engineer from DES who is with the Alteration of Terrain permitting program. Amy Clark had indicated the requirement for applicants of gravel pits submitting something every six years is a new requirement of the administrative rules of the department and has not yet been enforced universally, particularly with the older pits. This pit was permitted in 1984. She added she had spoken with Rose-Anne Kwaks about the requirement of there being five feet of cover over the seasonal high water table. She had mentioned this to Amy Clark because in the information provided by Seacoast Engineering who initially filed the Alteration of Terrain application, it had been indicated there would be five (5) feet cover. Amy Clark noted there is no state regulation that requires that amount and kind of cover over the seasonal high water table. Therefore, the State cannot enforce that provision. The site specific permit in effect is the one page letter and the only State conditions the State can require. If there is a concern about those requirements not being met, a letter can be submitted to the State. Amy Clark had indicated she received a plan in 2003 but the department did not follow-up on it. She suggested to Mrs. Kwaks this be dealt with directly with Ms. Clark. She added Rose-Anne Kwaks had provided a copy of a 2003 Supreme Court case concerning the Town of Goshen. She felt the opinion was more about whether local requirements were preempted by State law. The decision stated local requirements do not preempt state law and can be more stringent than state requirements. She questioned the applicability of that case to the application at hand. She noted she is willing to share all this information with the Board. The plan the Board is working off of is the 2003 reclamation plan. There are a lot of engineering details included. The Planning Board had reviewed it and approved it at the time. The process the Board is undertaking now is not a new permitting process but renewal of a permit approved in 2003.

Chairman Badger referenced RSA 155: E stating Newmarket is not obligated to enforce state regulations. He noted on June 15, 2009 there was a meeting with the Planning Board, Town Planner, Code Enforcement Officer and Town Administrator. At this time it was agreed the Town did not have the support and resources for implementation and enforcement of all state regulations for all the pits in Town. However, the Town's regulations which apply to permitted pits do parallel RSA155:E. He referenced the legal opinion from Attorney Spector relative to the permit application. There is also an in-depth inspection report from Zoning Administrator Dan Vincent. Zoning Administrator Dan Vincent noted there is no issue with the nature of the off-site materials which were brought in but he did have a concern with the pooling of water. The applicant had hired an engineering company to dig a test pit to address that issue. The Planning Board has the report relative to that issue.

Eric Weston asked if all the other pits have been inspected by Zoning Administrator Dan Vincent. Town Planner Diane Hardy noted the Rosa Pit is the only pit permitted under the town's regulations. Therefore, it is the only pit that has been inspected. The other pits are grandfathered.

Eric Weston asked if the recommendations made by Zoning Administrator Dan Vincent have to do only with the Aquifer Protection Overlay zoning district. Town Planner Diane Hardy explained there is a combination of requirements contained within the zoning and the excavation regulations that come into play. There are also three sections in the RSAs as well as local regulations including: minimum expressed operational standards, excavation and reclamation plan standards and incremental standards for gravel pits. She understood there has not been a comprehensive review of all pits in town in regards to all these standards.

Eric Weston noted on February 11, 2009, Attorney Spector had stated: “. . .In enforcing these minimum standards when it's never been done, the Town should be careful that it enforces them uniformly among all the existing excavation operations.” Town Planner Diane Hardy noted the State's requirements RSA 155E apply to both permitted and the grandfathered pits. Mr. Rosa is the only permitted operator in the Town.

Val Shelton asked about enforcement versus permit renewal. She appreciated Rose-Anne Kwaks comments but felt they were more of an enforcement issue. The Zoning Administrator did not see the off-site materials as being hazardous. Any enforcement concerns should be taken up with the Zoning Administrator. From a Conservation Commission standpoint, during their site walk there had been no visible standing water. She expressed her concern the Planning Board was beginning to engage in areas not under Planning Board jurisdiction. The regulations state a renewal be treated as a new application. She believed the Board had the authority to waive certain requirements. She felt the information necessary to evaluate the application was presented.

Eric Botterman felt the pits should all be treated similarly especially since they are located within the Aquifer Protection Overlay District. He understood there were limitations to the grandfathered pits, but felt annual inspections should be done. Chairman Badger agreed stating Zoning Administrator Dan Vincent has the authority to perform such inspections. He noted if Zoning Administrator Dan Vincent saw a violation of the regulations or of a site plan approval it is his job to bring that forward. Town Planner Diane Hardy explained the Zoning Administrator is also the Code Enforcement Officer; it is his job to take steps to ensure compliance. If a violation is noticed, the owner of the property is put on notice and can pursue relief through the Zoning Board of Adjustment if necessary. Relative to hazardous wastes, she believed the State has jurisdiction over hazardous construction materials. If there was a concern, the Zoning Administrator could contact the New Hampshire Department of Environmental Services (NHDES) for assistance.

Action

Motion: Val Shelton made a motion the Planning Board accept the application for excavation as being complete and compliant with Section 3.01 (A) and (B), based upon the information provided by the applicant.

Seconded: Rick McMenimen

Vote: All voted in favor

Action

Motion: Vice-Chairman Roy made a motion to approve the application for excavation permit be renewed for a three (3) year period subject to the following conditions:

Final inspection and report by the Code Enforcement Officer indicating the site is in compliance with the approved plan prepared by Doucet Survey and MJS Engineering dated September 11, 2003 with a last revision date of December 11, 2003 and confirming the applicant has installed the fencing and provided the test pit data as requested

The applicant not being required to rework the driveway at this time, however in the future if issues arise with the Town's

roadway not being kept in a debris free fashion the Planning Board shall notify the applicant in writing of the problem and direct the applicant to reconstruct the driveway so as to comply with the detail titled "Stabilize construction entrance detail" as shown on sheet D-1 on the approved plan set

A performance bond in the amount of \$27,000 be renewed yearly to cover the reclamation of all open areas on the site.

Seconded: Rick McMenimen

Action

Motion: Val Shelton amended the motion to include the following condition:

The Applicant submit in writing a letter to the Town stating there will be no burying of stumps on the site now or in the future relative to Section 2.02(C).

Seconded: Vice-Chairman Roy

Vote on amendment: All in favor

Vote on motion as amended: All in favor

Janice Rosa rejoined the board.

Applicants: Donna & Albion Dole

Location: 156 Exeter Road, Tax Map U5, Lot 17, R2 Zone

Application: Request for Waiver of Impact Fees for an Accessory Apartment

Donna Dole explained she and her husband have lived in Newmarket for 29 years and raised their family here. Her husband had been employed as a fill-in building inspector. In July 2001 they had applied for and received a permit to demolish their garage and to build a new two car garage with a third bay for her husband's dental lab. This new construction included a water and sewer hook-up fee. In May 2007 her husband was diagnosed with Alzheimer's disease. The dental lab remained open until her husband was ready to part with it. Their house has been on the market for nearly 3 years. There had been an interested buyer at which time and she had learned to convert the dental lab space to an apartment, a permit was needed. She went through the proper channels to get the apartment permitted. At the time the apartment was permitted, she was informed there would be impact fees. She asked for the impact fees to be waived for three reasons. They have not used the school system in 17 years. The apartment will not be rented to anyone with children; it is a studio apartment. The water and sewer system will not be impacted nearly as much as the dental lab would have used. She would like to be able to rent the apartment to help her financially until the house sold. She was told the impact fees would be \$6,200.

Town Planner Diane Hardy noted this would be considered the addition of one residential unit. She understood the apartment to be a studio apartment about 500 square feet. She noted there is not a specific section for accessory apartments. She felt the closest category would be a two-unit structure. The impact fees for this structure would be: \$2,963 for public schools; \$353 for recreation; \$905 for waste water treatment; and \$545 for water treatment. The maximum impact fee that can be applied is \$4,765. There is a provision allowing the Planning Board to waive all or a part of the impact fees. There are certain conditions under which waivers can be granted. She noted the Board had done similar waivers for two properties recently. She explained the situations under which the impact fees had been waived. One involved an apartment for a family with no children in the school system and the other had been supported by a statement from a realtor indicating the type of unit being marketed would generally not be for a family, which would have greater impacts on the school system. She referenced page 90 Section F, paragraph five: "A fee payer may request a full or partial waiver of the amount of an impact fee for a particular development based on the results of an independent study of the demand on public facilities and related costs." This shall be submitted to the Planning Board in support of the request.

Vice-Chairman Roy asked if there were impact fees imposed when the lab space was developed. Donna Dole explained there were no impact fees. She noted she could provide copies of the permits obtained. She recalled discussions about what type of signs could be put up. Vice-Chairman Roy noted he did not know what the rental laws were in New Hampshire. He was unsure whether there could be a restriction placed on the apartment, but agreed a one room apartment under 500 square feet would not likely draw a family's interest.

Eric Weston asked if the Town has spent the impact fees collected. Town Planner Diane Hardy believed the Town has spent some of the impact fees collected for a recreation plan.

Val Shelton asked if the ordinance has been reviewed within the last five years as that is a specific requirement of the ordinance. Town Planner Diane Hardy noted it has not been reviewed within the past three years. Val Shelton suggested the Board may need to review the ordinance. She did not feel impact fees as adopted were supposed to be applied against an accessory apartment. She suggested there is no clear impact fee for an accessory apartment. She felt this needed to be revisited but did not feel it needed to hold up the current request.

Eric Botterman agreed stating the Board needed to readdress the entire ordinance but did not feel the request should be held up. Vice-Chairman Roy agreed.

Chairman Badger opened the public hearing at 8:00 p.m.

Rose-Anne Kwaks of Wadleigh Falls Road noted she was on the Zoning Board of Adjustment when Donna Dole came in for a zoning variance. She noted the applicant had been in compliance for the development of the dental lab and had provided copies of all relative permits. She was unsure what conditions the Zoning Board had put on the approval of the variance. Town Planner Diane Hardy noted one condition for the applicant to consult with the Public Works Department about the payment for water and sewer connection fees. Rose-Anne Kwaks noted accessory apartments have to be 800 square feet or less and attached to the foundation of the house. Planning Boards have waived the school portion of the impact fees with the stipulation if it is discovered school children are living in the apartment the impact fees are reinstated. She felt this was fair. She felt the Planning Board should readdress the impact fees including amounts and how they are assessed.

Chairman Badger closed the public hearing at 8:03 p.m.

Action

Motion: Val Shelton made a motion to waive the impact fees relative to the application for Donna & Albion Dole for the property located at 156 Exeter Road, Tax Map U5, Lot 17, R2 Zone for the Public School System capital improvements subject to the applicant submitting a letter from a real estate professional stating that given the size of the accessory apartment there will be no impact on the school system; in addition the water and sewer impact fees be waived considering the Planning Board can waive those fees based on payments already made and to waive the recreation impact fee.

Seconded: Vice-Chairman Roy

Vote: All voted in favor

Donna Dole thanked the Board and asked if her realtor could provide the letter required or whether she would need a different realtor to provide the letter. The Board noted it would be appropriate for her to use the realtor she has been using.

New/Old Business

Janice Rosa noted she had been watching a Town Council meeting where Forrest Ransdell had been before the Council about an easement the Town holds over his property. She noted the Planning Board had been involved with that transaction and suggested there needed to be some ways of protecting residents that give the Town easements. She suggested this could be discussed at a later date.

Discussion on Economic Development for Master Plan

Chairman Badger noted about three weeks ago he participated in a meeting with the NCDC, Town Council Chairman Mike LaBranche, Town Administrator and Town Planner. The discussion on the table had been what is next for the NCDC and Newmarket. The NCDC was charged with the redevelopment of the mills. Since that project has now gotten under way, what is NCDC's role? There was a good discussion about a previous planning effort termed "Newmarket Tomorrow". There has also been an annual effort to review a chapter of the Master Plan. Chapter 6 of the Master Plan is the Economic Development chapter. This is an opportunity for the Town to address the next section of the Master Plan that needs revision. Town Council Chairman Mike LaBranche agreed to put the same item on the Town Council agenda. John Badger suggested with the downtown and mills being redeveloped we should be looking at other areas in town including the Black Bear TIF, the golf course, and other land that is zoned for business on Wadleigh Falls Road.

Chairman Badger reported on what had been presented to the Town Council on the Black Bear TIF recently. The numbers did not work for Newmarket relative to the Boise Cascade propopsal. The Black Bear TIF committee was not prepared to recommend to the Town Council to move forward with a project with a negative cash flow. Boise Cascade drove a hard bargain with the developer. The result was the project would not generate enough revenue to cover the bond payments for public infrastructure.

Val Shelton felt it would be reasonable to add innovative housing within Newmarket, as an economic development topic to study. She felt the statistics for Newmarket indicates that we have met the requirements for work force housing as the State defines it. There are other housing alternatives that could increase the tax base for Newmarket, however.

Action

Motion: Val Shelton made a motion the Planning Board authorize the Chairman to formulate a working committee to update Chapter 6 of the Master Plan titled "Economic Development."

Seconded: Eric Weston

Vote: All voted in favor

Rick McMenimen noted he received a 31-page email from the Strafford Regional Planning Commission (SRPC) relative to a report being released on regional housing needs. He will provide that information if it is applicable to this discussion. There is a Strafford Regional Planning Commission meeting on November 19, 2009 to be held in the Newmarket Town Hall auditorium. George Campbell, the Commissioner of NH DOT, will be the guest speaker.

Town Planner Diane Hardy explained she attended the SRPC Technical Review Committee meeting for Transportation Enhancement funding. They reviewed the scoring on the transportation enhancement applications. There were nine applications submitted for the region; Newmarket's application was in the top three. Recommendations will be made to the SRPC Executive Committee and the Metropolitan Planning Organization (MPO). Three projects from each region will be submitted to NH Department of Transportation for further consideration.

Rick McMenimen noted the Strafford Regional Planning Commission is also working on the construction of a bike path on Route 108. Eric Botterman noted that project was supposed to include Newfields. He understood they are still working on it, but that there would not be a significant financial requirement from the Town of Newfields.

Adjournment

Action

Motion: Rick McMenimen made a motion to adjourn at 8:18 p.m.

Seconded: Vice-Chairman Roy

Vote: All in favor